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| AUG 24 2018 | |
| CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA | |
| BY _____ | DEPUTY _____ |

William Mark Isbell Booking # T392730
Name and Prisoner/Booking Number

Lower Buckeye Jail
Place of Confinement

3250 W. Lower Buckeye Road
Mailing Address

Phoenix, Arizona 85009
City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

William Mark Isbell
(Full Name of Plaintiff)

Plaintiff,

v.

(1) City of Phoenix, et al.
(Full Name of Defendant)

☒ (All Individuals and/or Parties are)

☒ Sued in both their individual and

☒ Official Capacities

Defendant(s).

☐ Check if there are additional Defendants and attach page 1-A listing them.

CASE NO. CV-18-02705-PHX-JAT--DMF

(To be supplied by the Clerk)

CIVIL RIGHTS COMPLAINT BY A PRISONER

- ☒ Original Complaint
☐ First Amended Complaint
☐ Second Amended Complaint

"JURY TRIAL DEMAND"

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

- ☒ 28 U.S.C. § 1343(a); 42 U.S.C. § 1983
☐ 28 U.S.C. § 1331; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).
☒ Other: Supplemental Jurisdiction or "Pendent Jurisdiction" re: State Tort Claim
28 U.S.C. § 1367.

2. Institution/city where violation occurred: 901 N. 7th St., Phoenix, AZ 85004

550/555

B. DEFENDANTS

1. Name of first Defendant: CITY OF PHOENIX. The first Defendant is employed as: MUNICIPALITY at PHOENIX, ARIZONA.
(Position and Title) (Institution)
2. Name of second Defendant: JODY EDWARD BOOWAY. The second Defendant is employed as: CITY OF PHOENIX POLICE OFFICER BADGE # 08345 at PHOENIX, ARIZONA.
(Position and Title) (Institution)
3. Name of third Defendant: ANDREA PEREZ-SALTILAN. The third Defendant is employed as: CITY OF PHOENIX POLICE OFFICER BADGE # 10167 at PHOENIX, ARIZONA.
(Position and Title) (Institution)
4. Name of fourth Defendant: RYAN DEWITS ARNET. The fourth Defendant is employed as: CITY OF PHOENIX POLICE OFFICER BADGE # 07762 at PHOENIX, ARIZONA.
(Position and Title) (Institution)

(CONTINUED ON P. 22.)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☒ Yes ☐ No
2. If yes, how many lawsuits have you filed? 5. Describe the previous lawsuits:
- a. First prior lawsuit:
- Parties: WILLIAM MARK ISBELL V. DEWITS FARRELL
 - Court and case number: MARICOPA COUNTY SUPERIOR COURT; UNKNOWN CASE NO.
 - Result: (Was the case dismissed? Was it appealed? Is it still pending?) (FILED APPROX 2004)
DISMISSED WITHOUT PREJUDICE (MALPRACTICE)
- b. Second prior lawsuit:
- Parties: WILLIAM MARK ISBELL V. JUSTIN HUGHES, ET AL
 - Court and case number: U.S. DIST. COURT OF DIST. OF ARIZONA; UNKNOWN CASE NO.
 - Result: (Was the case dismissed? Was it appealed? Is it still pending?) (FILED APPROX 2004);
SUMMARY JUDGEMENT GRANTED IN FAVOR OF PLAINTIFF AND DEFENDANT'S SETTLED OUT OF COURT. (UNCONSTITUTIONAL SEARCH 4TH AMENDMENT CLAIM)
- c. Third prior lawsuit:
- Parties: WILLIAM MARK ISBELL V. CHARLES L. RYAN, ET AL
 - Court and case number: U.S. DIST. COURT DIST. OF ARIZONA; UNKNOWN CASE NO.
 - Result: (Was the case dismissed? Was it appealed? Is it still pending?) (FILED APPROX 2011);
SETTLED OUT OF COURT IN FAVOR OF PLAINTIFF. (RLUIPA AND 1 AMENDMENT CLAIM)
(CONTINUED ON PG 2)

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

3. DEFENDANTS CONTINUED FROM P.2:

5. NAME OF FIFTH DEFENDANT: CHRISTINA M. BEGAY. THE FIFTH DEFENDANT IS EMPLOYED AS: CITY OF PHOENIX POLICE OFFICER BADGE #082128 AT PHOENIX, ARIZONA.

6. NAME OF SIXTH DEFENDANT: NATHANIEL CHAMPLAIN. THE SIXTH DEFENDANT IS EMPLOYED AS: CITY OF PHOENIX POLICE OFFICER BADGE #08133 AT PHOENIX, ARIZONA.

7. NAME OF SEVENTH DEFENDANT: RANDY GOMEZ. THE SEVENTH DEFENDANT IS EMPLOYED AS: CITY OF PHOENIX POLICE OFFICER BADGE #10160 AT PHOENIX, ARIZONA.

8. NAME OF EIGHTH DEFENDANT: DECLAN M. MCCARTHY. THE EIGHTH DEFENDANT IS EMPLOYED AS: CITY OF PHOENIX POLICE OFFICER BADGE #08141 AT PHOENIX, ARIZONA.

9. NAME OF NINTH DEFENDANT: ROSEMARY NELSON. THE NINTH DEFENDANT IS EMPLOYED AS: CITY OF PHOENIX POLICE SERGEANT BADGE #06878 AT PHOENIX, ARIZONA.

10. NAME OF TENTH DEFENDANT: ADRIAN RIVAS. THE TENTH DEFENDANT IS EMPLOYED AS: CITY OF PHOENIX POLICE OFFICER BADGE #9024 AT PHOENIX, ARIZONA.

11. NAME OF ELEVENTH DEFENDANT: PHILLIP ROBERTS. THE ELEVENTH DEFENDANT IS EMPLOYED AS: CITY OF PHOENIX POLICE SERGEANT BADGE #04520 AT PHOENIX, ARIZONA.

12. NAME OF TWELTH DEFENDANT: RYAN SHEL. THE TWELTH DEFENDANT IS EMPLOYED AS: CITY OF PHOENIX POLICE OFFICER BADGE #09838 AT PHOENIX, ARIZONA.

(CONTINUED ON P.2B).

B. DEFENDANTS CONTINUED FROM P. 2A:

13. NAME OF THE THIRTEENTH DEFENDANT: FRANK VALENZUELA. THE THIRTEENTH DEFENDANT IS EMPLOYED AS: CITY OF PHOENIX POLICE OFFICER BADGE # 10093 AT PHOENIX, ARIZONA.

14. NAME OF FOURTEENTH DEFENDANT: LIEUTENANT SALFAR. THE FOURTEENTH DEFENDANT IS EMPLOYED AS: CITY OF PHOENIX POLICE LIEUTENANT BADGE # 06138 AT PHOENIX, ARIZONA.

• ALL INDIVIDUALS AND/OR PARTIES NAMED HEREIN ARE SUED IN BOTH THEIR INDIVIDUAL AND OFFICIAL CAPACITIES, WHO ACTED UNDER COLOR OF STATE LAW.

C. PREVIOUS LAWSUITS CONTINUED FROM P. 2A:

D. Fourth Prior Lawsuit:

1. PARTIES: WILLIAM MARK ISBELL v. CHARLES L. BYRN, ET, AL,
2. COURT AND CASE NUMBER: U.S. DIST. COURT DIST OF ARIZONA, CV13-00941-PHX-JAT (DYO).
3. RESULT: (FILED 2013) (EIGHT AMENDMENT CLAIM) SUMMARY JUDGMENT GRANTED IN DEFENDANTS FAVOR, INTERLOCUTORY APPEAL SOUGHT BY PLAINTIFF AND DEFENDANT CONCEDED BELIEF SOUGHT.

E. Fifth Prior Lawsuit:

1. PARTIES: WILLIAM MARK ISBELL v. CITY OF PHOENIX, ET, AL,
2. COURT AND CASE No: U.S. DIST. COURT; CV-18-00290-PHX-JAT (DMF).
3. RESULT: PLAINTIFF VOLUNTARILY DISMISSED; DISMISSED WITHOUT PREJUDICE.

D. CAUSE OF ACTION

COUNT I

1. State the constitutional or other federal civil right that was violated: PLAINTIFF WAS SUBMITTED TO EXCESSIVE FORCE BY MULTIPLE PHOENIX POLICE OFFICERS ACTING IN VIOLATION OF COLORADO STATE LAW DURING HIS DETENTION AND/OR ARREST. IN VIOLATION OF THE 4TH AMENDMENTS "OBJECTIVELY REASONABLE" STANDARD.

2. **Count I.** Identify the issue involved. Check only one. State additional issues in separate counts.

- | | | | |
|---|---|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input checked="" type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____ | |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count I. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

1. ON 8-22-2017, PLAINTIFF WAS THE SUBJECT TO A ARMED ROBBERY ON COR 40TH STREET AND ROOSEVELT. BY NO LESS THAN 7 POSSIBLY 8 PERPETRATORS, A MALE IDENTIFIED TO PLAINTIFF AS "FRODO'S HOUSE".

2. AT LEAST ONE OF THE ASSAULTANTS IDENTIFIED TO PLAINTIFF ONLY AS "SHORTY" HAD A FIREARM.

3. PLAINTIFF DISTRACTED THE PERPETRATORS JUST LONG ENOUGH TO ESCAPE BY JUMPING A FENCE AND FLEEING ON FOOT, WHILE SEVERAL ASSAULTANTS PURSUED HIM IN A GRAY VEHICLE.

4. PLAINTIFF "ZIGZAGGED" BACK AND FORTH IN THE INTERSECTION OF ROOSEVELT AND 7TH STREET IN AN EFFORT TO AVOID BEING SHOT, BECAUSE THE ASSAULTANT IDENTIFIED AS "SHORTY" WAS IN THE PASSENGER SIDE FRONT SEAT OF THE VEHICLE WAIVING A PISTOL OUT THE WINDOW.

5. PLAINTIFF REPEATEDLY SCREAMED FOR HELP, EVENTUALLY, SOMEONE OUTSIDE A BUSINESS LOCATION LOCATED AT: 901 N. 7TH ST, PHOENIX, AZ 85004, IDENTIFIED AS "AMERICA MUFFLERS" TOLD PLAINTIFF TO RETREAT INSIDE THE SHOP, SO PLAINTIFF DID.

6. PLAINTIFF FOUND A CLOSET INSIDE THE MUFFLER SHOP, WHICH APPEARED TO BE A SMALL "STORAGE CLOSET". PLAINTIFF CLOSED THE DOOR AND ATTEMPTED TO BARRICADE IT, IN FEAR OF BEING SHOT. THE ROOM HAD NO LIGHT, AND WAS COMPLETELY DARK.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

(CONTINUED ON P. 3B, ATTACHED HERETO)
AS A DIRECT AND PROXIMATE RESULT OF THE NAMED INDIVIDUAL(S) OR PARTIES ACTIONS OR IN-ACTIONS, PLAINTIFF HAS SUFFERED, AND WILL CONTINUE TO SUFFER THE FOLLOWING LOSSES OR INJURIES: 2. VIOLATIONS OF PLAINTIFF'S CIVIL RIGHTS PROTECTED UNDER THE 4TH AMENDMENT OF THE U.S. CONSTITUTION;

5. **Administrative Remedies:**

(CONTINUED ON P. 3E, ATTACHED HERETO)

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☒ No
- b. Did you submit a request for administrative relief on Count I? ☐ Yes ☒ No
- c. Did you appeal your request for relief on Count I to the highest level? ☐ Yes ☒ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. N/A... PLAINTIFF DID HOWEVER FILE A "NOTICE OF CLAIM" ON 12-18-2017, PURSUANT TO A.R.S. § 12-821.01 WITH CIVIC PHOENIX CITY CLERKS DEPARTMENT. PLAINTIFF'S CLAIMS ARE NOT SUBJECT TO PRA REQUIREMENTS OF 42 U.S.C. § 1997e(2). THE NOTICE WAS DENIED ON 1-16-18.

D. CAUSE OF ACTION

3. SUPPORTING FACTS CONTINUED FROM P. 3:

7. ALMOST IMMEDIATELY, PLAINTIFF HEARD SEVERAL ATTEMPTS TO "BREACH" THE DOOR BY WHAT QUITE NATURALLY HE ASSUMED WAS THE PERPETRATORS... THEN IT GOT QUIET.

8. PLAINTIFF Woke UP THE NEXT AFTERNOON ON AUGUST 23, 2017, IN THE INTENSIVE CARE UNIT ("ICU") AT BANNER GOOD SAMARITAN MED. CENTER LOCATED AT: 1111 E. McDOWELL RD., PHOENIX, ARIZONA.

9. PLAINTIFF HAD ZERO KNOWLEDGE OF EVER HAVING ANY CONTACT WITH LAW ENFORCEMENT.

10. A CITIZEN IDENTIFIED LATER AS JOSE SARAGOZA APPARENTLY CALLED 911 IN RESPONSE TO PLAINTIFF'S SCREAMS FOR HELP.

11. CITY OF PHOENIX POLICE OFFICERS: JODY EDWARD BODWAY ("BODWAY"), ANDREA PEREZ-SANTILLAN ("SANTILLAN"); RYAN DENNIS ARNETT ("ARNETT"); NATHANIEL CHAMPLAIN ("CHAMPLAIN"); RYAN GOMEZ ("GOMEZ"); ADRIAN RIVAS ("RIVAS"), AND FRANK VALENZUELA ("VALENZUELA"), VERBALLY RELAYED OR FILED VARIOUS WRITTEN REPORTED "VERSIONS" OF THE STATE OF THE "STORAGE CLOSET" DOOR PLAINTIFF WAS IN: (I.E. THE DOOR WAS SHUT; THE DOOR WAS ABOUT 4" OPEN; THE DOOR WAS HANGING OFF ITS HINGES, ETC.), HOWEVER, ALL ADMIT PLAINTIFF WAS LOCATED INSIDE THE CLOSET, HIDDEN IN THE CORNER, UNARMED, AND IN OBVIOUS MEDICAL DISTRESS.

12. IN FACT, OFFICERS BODWAY, SANTILLAN, ARNETT, CHAMPLAIN, GOMEZ, RIVAS, AND VALENZUELA ADMIT TO HEARING "GURGLING" SOUNDS INTUALLY FROM PLAINTIFF, AND THAT HE WAS UNABLE TO RESPOND WHEN ASKED -

(CONTINUED ON P. 3B).

D. CAUSE OF ACTION

3. SUPPORTING FACTS CONTINUED FROM P.32:

IF HE NEEDED MEDICAL ATTENTION.

13. NONE OF THE 13 NAMED CITY OF PHOENIX POLICE OFFICERS NAMED AS DEFENDANTS IN THIS COMPLAINT, EVER STATED IN REPORTS THAT THEY INFORMED PLAINTIFF WHY HE WAS UNDER ARREST, AND IN FACT, HAVE CLEARLY STATED THEY WERE INITIALLY ACTING OUT OF "CONCERN" PLAINTIFF NEEDED MEDICAL AIDE, NOT IN AN INITIAL EFFORT TO ARREST PLAINTIFF.

14. SIGNIFICANTLY, BODWAY, SANTILLAN, ARNETT, CHAMPLAIN, GOMEZ, RIVAS, AND VALENZUELA REPORTED PLAINTIFF WAS SCREAMING "PLEASE STOP ETC", REFERRING TO OFFICERS AS ONE OF HIS ASSAILANTS, ALL THE WAY TO THE HOSPITAL WHEN PLAINTIFF WOULD BRIEFLY REGAIN "CONSCIOUSNESS" MAKING IT CRYSTAL CLEAR PLAINTIFF HAD ZERO KNOWLEDGE AS TO OFFICERS "STATUS" AS PEACE OFFICERS.

15. PLAINTIFF CAN ONLY ASSUME, OFFICERS MISTOOK HIS IN-ABILITY TO RESPOND TO THEIR "QUESTIONS" OR "COMMANDS", AS INSOLENCE.

16. NEEDLESS TO SAY, BODWAY, SANTILLAN, ARNETT, CHAMPLAIN, GOMEZ, RIVAS, VALENZUELA; CHRISTINA N. BEGAY ("BEGAY"); DECLAN M. MCCARTHY ("MCCARTHY"); SERGEANT PHILLIP ROBERTS ("ROBERTS"); AND RYAN SHELL ("SHELL"), SEVERELY BEAT THE UNARMED PLAINTIFF FOR WHATEVER REASONS TO THE POINT OF UNCONSCIOUSNESS INSIDE THE SMALL "STORAGE CLOSET".

17. OFFICERS BODWAY, AND CHAMPLAIN BOTH FILED REPORTS ADMITTING PLAINTIFF LOST CONSCIOUSNESS AS A RESULT OF THEIR BLOWS.

18. OFFICER BODWAY EVEN ADMITS HE INJURED HIS RIGHT WRIST BY "PUNCHING" THE UNARMED PLAINTIFF "MULTIPLE TIMES" WITH HIS -

D. CAUSE OF ACTION

3. SUPPORTING FACTS CONTINUED FROM P.3 B:

CLOSED FISTS USING WHAT HE CALLS "CLOSED FIST HAMMER STRIKES" TO THE PLAINTIFF'S RIGHT SIDE OF HIS HEAD AND FACE WHILE PLAINTIFF WAS ALREADY FACE DOWN ON THE GROUND WITH SEVERAL OFFICERS ON HIM.

19. FURTHER, BODWAY EVEN ADMITS USING MULTIPLE "CLOSED FIST UPPER-CUT STRIKES" TO PLAINTIFF'S FACE, WHICH KNOCKED HIM ON THE GROUND... PLAINTIFF'S RIGHT EYE LID WAS SPLIT OPEN AND REQUIRED SUTURES.

20. SIGNIFICANTLY, BODWAY WHOM IS 278 LBS, ADMITS HE HIT PLAINTIFF SO MANY TIMES PLAINTIFF LOST CONSCIOUSNESS FOR UP TO 40 SECONDS.

21. BODWAY ADMITS TO STRIKING PLAINTIFF'S RIGHT SHOULDER MULTIPLE TIMES, WHICH PLAINTIFF ASSERTS CAUSED, OR LIKELY CAUSED, THE FRACTURE TO HIS RIGHT SHOULDER CLAVICLE AND TORE HIS "A.C."

22. OFFICER CHAMPLAIN ADMITS TO STRIKING PLAINTIFF MULTIPLE TIMES USING WHAT HE CALLED "CLOSED FIST HAMMER STRIKES" AGAIN, WHILE PLAINTIFF WAS FACE DOWN ON THE GROUND.

23. CHAMPLAIN ADMITS TO USING MULTIPLE "KNEE STRIKES" TO PLAINTIFF'S LOWER BACK WHILE THE PLAINTIFF WAS FACE DOWN ON THE GROUND WITH SEVERAL OTHER OFFICERS ON TOP OF HIM ALREADY.

24. PLAINTIFF ASSERTS CHAMPLAIN'S ACTIONS CAUSED, OR LIKELY CAUSED, THE MULTIPLE FRACTURES IN HIS BACK AND HIS RENAL FAILURE.

25. OFFICER GOMEZ ADMITS CHAMPLAIN DELIVERED "MULTIPLE STRIKES" TO PLAINTIFF'S LEFT LEG WHILE HE WAS ON THE GROUND, WHICH PLAINTIFF ASSERTS CAUSED, OR LIKELY CAUSED, HIS LEFT TOE FRACTURE, WHICH WAS SNAPPED IN 2 AS IF A BOOT WAS STOMPING DOWN ON IT.

D. CAUSE OF ACTION3. SUPPORTING FACTS CONTINUED FROM P.3C:

26. PLAINTIFF ASSERTS HE WAS SUBJECT TO OVERZEALOUS, OUTRAGIOUS MISCONDUCT ON THE PART OF MULTIPLE CITY OF PHOENIX POLICE OFFICERS. SPECIFICALLY, BOOWAY, SAUTILLAN, ARNETT, CHAMPLAIN, GOMEZ, RIVAS, VALENZUELA, BECAY, MC-CARTHY, ROBERTS, AND SHELL.

27. PLAINTIFF ASSERTS THE ACTIONS OF THESE 11 OFFICERS RESULTED IN HIS LOSS OF CONSCIOUSNESS, PLAINTIFF'S ASPIRATION AND SUBSEQUENT NEED TO BE INTUBATED WITH MECHANICAL VENTILATION, PLAINTIFF HAVING SUFFERED A BROKEN BACK IN 3 PLACES, A BROKEN TOE, A SPLIT OPEN EYE, RENAL FAILURE WHICH REQUIRED PLAINTIFF TO BE CATHETERIZED FOR SEVERAL DAYS, AND PLAINTIFF SUFFERED FROM MANY DEEP CUTS, ABRASION AND BRUISES, WHICH REQUIRED SUTURES.

28. PLAINTIFF WAS HOSPITALIZED IN ICU FOR SEVERAL DAYS AT BAUNIER GOOD SAMARITAN MED. CENTER, AND UNDERWENT MANY PROCEDURES.

29. PLAINTIFF PERSONALLY SPOKE TO ARNETT ON AUGUST 24, 2017, WHO WAS "POSTED" OUTSIDE HIS HOSPITAL ICU ROOM. WHEN PLAINTIFF ASKED "WHY?? ARNETT SAID: PLAINTIFF GAVE A FEMALE OFFICER A BLACK EYE"... AND "THEY HAD TO DO WHAT THEY DID AS A RESULT".

30. PLAINTIFF ASKED ARNETT IF HE THOUGHT IT WAS REGRET... ARNETT SAID "IT GOT A LITTLE UN-COMFORTABLE FOR HIS TASTE".

31. IT IS NOTE WORTHY, NO SUCH FEMALE WAS HIT, NOR SUFFERED ANY BLACK EYE... ARNETT, GOMEZ, AND CHAMPLAIN LIES!!!!

32. PLAINTIFF WILL REQUIRE ON-GOING CARE FOR THE FORESEEABLE FUTURE, AND IS CONFINED TO A WHEELCHAIR AND/OR USE OF A CANE FOR MOBILITY.

D. CAUSE OF ACTION

4. TULUURY CONTINUED FROM P.3:

B. VIOLATIONS OF PLAINTIFF'S RIGHTS AS A CITIZEN AND RESIDENT OF ARIZONA, PROTECTED UNDER THE ARIZONA CONSTITUTION; C. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; D. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS; E. PAIN AND SUFFERING; F. SUBJECTED TO OBJECTIVELY UNREASONABLE USE OF FORCE DURING "SEIZURE" OR APPREHENSION; G. SUBJECTED TO EXCESSIVE FORCE IN VIOLATION OF STATE LAW PURSUANT TO A.R.S. § 13-409; H. SUBJECTED TO ASSAULT AND BATTERY BY NO LESS THAN 11 CITY OF PHOENIX POLICE OFFICERS; I. AS A DIRECT RESULT OF OUTRAGEOUS MISCONDUCT BY 11 OFFICERS PLAINTIFF SUFFERED: RENAL FAILURE; REPEATED EPISODES OF LOSS OF CONSCIOUSNESS; ASPIRATION REQUIRING INTUBATION AND MECHANICAL VENTILATION; PLAINTIFF'S RIGHT SHOULDER CLAVICLE WAS BROKEN; PLAINTIFF'S BACK WAS BROKEN IN 3 PLACES; PLAINTIFF'S "A.C." IN HIS RIGHT SHOULDER WAS TORN; PLAINTIFF'S TOE WAS BROKEN; AND PLAINTIFF HAD MANY DEEP CUTS, ABRASIONS, AND A SPILT OPEN RIGHT EYE THAT REQUIRED SUTURES; J. PLAINTIFF WAS HOSPITALIZED SEVERAL DAYS IN I.C.U.; K. PLAINTIFF UNDERWENT MANY MEDICAL PROCEDURES; L. PLAINTIFF WILL REQUIRE COSTLY, AND ON-GOING MEDICAL CARE, MEDICATIONS, AND PHYSICAL THERAPY FOR THE FORESEEABLE FUTURE; AND M. PLAINTIFF CONTINUES TO SUFFER LOSS OF SLEEP, EXCRUCIATING PAIN, DIZZINESS, AND IS CONFINED TO A WHEELCHAIR AND/OR USE OF A CANE FOR MOBILITY.

COUNT II

1. State the constitutional or other federal civil right that was violated: PLAINTIFF RAISES THE STATE-TOO CLAIM OF NEGLIGENCE SUPERVISION RELATED TO SERGEANT PHILIP ROBERTS, SERGEANT ROSEMARY NELSON, AND LIEUTENANT SALLER. THIS COURT HAS JURISDICTION UNDER U.S.C.A. 1367 SUPPLEMENTAL JURISDICTION.

2. Count II. Identify the issue involved. Check only one. State additional issues in separate counts.

- | | | | |
|--|---|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input checked="" type="checkbox"/> Other: "NEGLECTFUL SUPERVISION" | |

3. Supporting Facts. State as briefly as possible the FACTS supporting Count II. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

33. PLAINTIFF INCORPORATES HEREWITH THE PROCEEDINGS ENUMERATED PARAGRAPHS (1) THROUGH (32), AS THOUGH FULLY PLEAD HEREIN.

34. CITY OF PHOENIX POLICE SERGEANT ROBERTS, AND LIEUTENANT SALLER ("SALLER"), FAILED TO ACT UPON THEIR VESTED STATE LAW AUTHORITY AND RESPONSIBILITY AS SUPERVISORS WITHIN THE CITY OF PHOENIX POLICE DEPARTMENT BY WITNESSING SUCH GROSS MISCONDUCT ASSUMED IN ABOVE PARAGRAPHS (1) THROUGH (32), AND FAILING TO INTERVENE ON 8-22-2017.

35. IN FACT, ROBERTS ACTUALLY PARTICIPATED IN THE ASSAULT AND BATTERY ON PLAINTIFF, RIGHT AND LEFT SIDE TO HIS FELLOW SUBORDINATE OFFICERS, SPECIFICALLY, OFFICERS: BOWWAY, SAITHIAN, ARNETT, CHAMPLAIN, GOMEZ, RIVAR, VALENZUELA, BECLAY, MCCARTHY, AND SHELL.

36. CITY OF PHOENIX POLICE SUPERVISOR SERGEANT ROSEMARY NELSON ("NELSON"), SERGEANT ROBERTS, AND LIEUTENANT SALLER FAILED TO ENSURE OFFICERS WHEREIN COMPLIANCE WITH THE STATE OF ARIZONA REQUIREMENTS AND/OR INVESTIGATION FOR USE OF FORCE BY LAW ENFORCEMENT PURSUANT TO A.R.S. §13-409 ON 8-22-2017, DESPITE HAVING THE VESTED AUTHORITY AND RESPONSIBILITY AS SUPERVISORS TO ACT.

37. NELSON, ROBERTS, AND SALLER FAILED TO ENSURE THEIR FELLOW SUBORDINATE OFFICERS USE OF FORCE RELATED TO PLAINTIFF'S DETENTION AND/OR ARREST, WAS OBJECTIVELY REASONABLE IN COMPLIANCE WITH CLEARLY ESTABLISHED FEDERAL LAW.

(CONTINUED ON P. 12)

4. Injury. State how you were injured by the actions or inactions of the Defendant(s).

AS A DIRECT AND PROXIMATE RESULT OF THE NAMED INDIVIDUAL(S) OR PARTIES ACTIONS OR IN-ACTIONS, PLAINTIFF HAS SUFFERED, AND WILL CONTINUE TO SUFFER, THE FOLLOWING LOSSES OR INJURIES: (SEE COUNT I "INJURY" SUPRA, AT P. 3.)

5. Administrative Remedies.

- Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☒ Yes ☐ No
- Did you submit a request for administrative relief on Count II? ☒ Yes ☐ No
- Did you appeal your request for relief on Count II to the highest level? ☒ Yes ☐ No
- If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. N/A. PLAINTIFF DID HOWEVER FILE A "NOTICE OF CLAIM" ON 12-18-2017 PURSUANT TO A.R.S. §12-821.01 WITH THE CITY OF PHOENIX CITY CLERK DEPARTMENT. PLAINTIFF'S CLAIMS ARE NOT SUBJECT TO PLRA REQUIREMENTS OF 42 U.S.C.A. §1997e(2). THE NOTICE WAS DENIED 1-16-18

COUNCIL.

3. SUPPORTING FACTS CONTINUED FROM P. 4:

38. NELSON, ROBERTS, AND SALEAR AS SUPERVISORS, FAILED TO ENFORCE CITY OF PHOENIX POLICE DEPARTMENTAL POLICY RELATED TO "USE OF FORCE" WHICH MANDATES: "ALL SWORN EMPLOYEES WILL INTERVENE, IF A REASONABLE OPPORTUNITY EXISTS, WHEN THEY KNOW OR SHOULD KNOW ANOTHER EMPLOYEE IS USING UNREASONABLE FORCE."

39. ROBERTS AND SALEAR AS SUPERVISORS "ON-SCENE" ON 8-22-17, FAILED TO REQUEST THEM TO SUBORDINATE OFFICERS TO UTILIZE OTHER "RESPONSE OPTIONS" AVAILABLE FIRST, SUCH AS ELECTRONIC CONTROL DEVICE ("ECD"), DRIVE STUNGUNS, CHEMICAL WEAPONS, ECT, AS CITY OF PHOENIX POLICY REQUIRES PRIOR TO THE USE OF "INTERMEDIATE CONTROL TECHNIQUES" I.E. HARD EMPTY HAND TECHNIQUES, WHICH INCLUDE: "CLOSED FIST STRIKES", "HAMMER FIST STRIKES", "KNEE STRIKES", WHICH IS ONLY TO BE USED TO PREVENT IMMEDIATE SERIOUS BODILY INJURY OR DEATH OF AN OFFICER. THOSE FACTS DO NOT EXIST HERE...

40. BODWAY ADMITTED USING "CLOSED FIST" "UPPERCUT STRIKES", "CLOSED FIST HAMMER STRIKES", AND EVEN "PUNCHING" PLAINTIFF'S HEAD AND FACE MULTIPLE TIMES UNTIL HE LOST CONSCIOUSNESS UP TO 40 SECONDS, IN VIOLATION OF PHOENIX POLICE POLICY REGARDING USE OF FORCE, YET, SUPERVISORS NELSON, ROBERTS, AND SALEAR, FAILED TO DOCUMENT THE USE OF FORCE ON 8-22-17, ON PLAINTIFF, BY COMPLETING RMS USE OF FORCE REPORTS AS MANDATED BY POLICY.

41. CHAMPATHU ADMITTED USING REPEATED "KNEE STRIKES" AND "CLOSED FIST HAMMER STRIKES" ON PLAINTIFF'S BACK WHILE PLAINTIFF WAS FACE DOWN ON THE GROUND, UN-ARMED, IN A CONFINED STORAGE CLOSET, WITH MULTIPLE OTHER OFFICERS AROUND AND ON TOP OF PLAINTIFF ALREADY.

COUNT II3. Supporting Facts Continued From P. 42:

42. PHOENIX POLICE POLICY SPECIFICALLY STATES OFFICERS ARE TO AVOID HAMMER STRIKES AND KNEESTRIKES ON NECKS, BACKS, STERNUM, KIDNEYS, AND GROIN. YET, DESPITE CHAMPLAIN'S ADMITTED USE OF THESE "TECHNIQUES" ON PLAINTIFF'S BACK AND KIDNEYS, SUPERVISORS NELSON, ROBERTS, AND Salfar FAILED TO DOCUMENT CHAMPLAIN'S VIOLATIONS, OR PREPARE RMS USE OF FORCE REPORTS AS REQUIRED.

43. AT NO TIME ARE OFFICERS PERMITTED BY POLICY TO UTILIZE MULTIPLE "PUNCHES," OR "HAMMER STRIKES" TO SUSPECTS HEADS OR FACES, AS WAS ADMITTED BY BODWAY AND CHAMPLAIN. YET, BODWAY AND CHAMPLAIN'S SUPERVISORS NELSON, ROBERTS, AND Salfar ON 8-22-17, DID NOT DOCUMENT SUCH FLAGRANT POLICY VIOLATIONS.

44. SUPERVISORS NELSON, ROBERTS, AND Salfar FAILED TO ENFORCE PHOENIX POLICE POLICY REQUIRING OFFICERS TO WEAR AND OPERATE BODY CAMS DURING INCIDENTS THAT REQUIRE "USE OF FORCE SERIOUS ENOUGH TO CAUSE SERIOUS PHYSICAL INJURY TO INDIVIDUALS LIKE THE PLAINTIFF... ESSENTIAL 'AIDING IN A COVER-UP' AFTER THE FACT."

45. ALL 13 CITY OF PHOENIX POLICE OFFICERS INVOLVED ON 8-22-17 CONVENIENTLY, CLAIM "NO SUCH VIDEO EXIST" OF THE INCIDENT RELATED TO PLAINTIFF.

46. NELSON, ROBERTS, AND Salfar, FAILED TO QUESTION OR CHALLENGE THE INCONSISTENT REPORTS REGARDING THE OFFICERS' "VERSIONS" OF THE INCIDENT SURROUNDING PLAINTIFF'S DETENTION AND/OR ARREST ON 8-22-17, AND THE NEED FOR SUCH EXTREME USE OF FORCE, GIVEN THE FACT PLAINTIFF WAS UN-ARMED, IN OBVIOUS MEDICAL DISTRESS, AND "RESTRAINED" FACE DOWN,

Court II

3. Supporting Facts Continued From P. 48:

DESPITE, HAVING THE VESTED AUTHORITY AND RESPONSIBILITY FOR DOING SO, AS
CITY OF PHOENIX POLICE SUPERVISORS WITHIN THE DEPARTMENT, AND DIRECTLY
INVOLVED IN PLAINTIFF'S "INCIDENT" ON 8-22-17.

17. PLAINTIFF AVOWS HE COMPLIED WITH THE NOTICE OF CLAIM REQUIREMENTS
PURSUANT TO A.R.S. § 12-821.01, AND FILED PROPER NOTICE WITH THE CITY OF
PHOENIX CLERK'S OFFICE ON 12-18-17 PRIOR TO FILING SUIT.

COUNT III

1. State the constitutional or other federal civil right that was violated: Plaintiff was subjected to excessive force in violation of state law pursuant to A.R.S. §13-409. This court has jurisdiction pursuant to "Supplemental Jurisdiction" doctrine under 28 U.S.C. §1367.

2. **Count III.** Identify the issue involved. Check only one. State additional issues in separate counts.

- | | | | |
|--|---|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input checked="" type="checkbox"/> Other: <u>Excessive Force State Tort Claim.</u> | |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

48. Plaintiff incorporates herewith the proceedings enumerated paragraphs (1) through (47), as though fully read herein.

49. In the State of Arizona, justification for use of physical force in law enforcement is governed under A.R.S. 13-409.

50. A.R.S. 13-409 states: A person is justified in using or using physical force against another if in making or assisting in making an arrest or detention or in preventing or assisting in preventing the escape after an arrest or detention of that other person, such person uses or threatens to use physical force and all of the following exist:

1. A reasonable person would believe that such force is immediately necessary to effect the arrest or detention or prevent the escape.

2. Such person makes known the purpose of arrest or detention or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested or detained.

3. A reasonable person would believe the arrest or detention to be lawful. (continued on p. 5A).

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

As a direct and proximate result of the named individual(s) or parties actions or inactions, Plaintiff has suffered, and will continue to suffer, the following losses or injuries: (See Count 1 "Injury", supra, at p. 3.)

5. **Administrative Remedies.**

- Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☒ No
- Did you submit a request for administrative relief on Count III? ☐ Yes ☒ No
- Did you appeal your request for relief on Count III to the highest level? ☐ Yes ☒ No
- If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. N/A. Plaintiff did however file a "Notice of Claim" on 12-18-2017 pursuant to A.R.S. §12-821.01 with the City of Phoenix City Clerks Department. Plaintiff's

claims are not subject to PRA requirements of 42 U.S.C. §1997e (2).

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.
The notice was denied on 10/6/18

COUNT III -

3. Supporting Facts Continued From P.5:

51. THE 911 OPERATOR CAN BE HEARD ASKING JOSE SARAGOZA IF PLAINTIFF WAS ARMED, AND SARAGOZA CLEARLY STATES NO TO THE OPERATOR.

52. IN FACT, SARAGOZA TELLS THE OPERATOR PLAINTIFF IS HIDING IN A CLOSET TO "HIDE FROM PEOPLE FOLLOWING HIM".

53. WHEN CITY OF PHOENIX POLICE OFFICERS: BODWAY, SANTILLAN, ARNET, CHAMPLAIN, GOMEZ, RIVAS, VALENZUELA, BEGAY, MCCARTHY, ROBERTS, AND SHELL, ("11"), ARRIVED AT 901 N. 7TH ST., ALL ADMITTED THEY WERE INITIALLY ACTING OUT OF A CONCERN PLAINTIFF NEEDED MEDICAL AIDE, NOT IN AN EFFORT TO ARREST PLAINTIFF.

54. ALL 11 OFFICERS HAVE ADMITTED PLAINTIFF WAS FOUND INSIDE A SMALL CONFINED STORAGE CLOSET, UN-ARMED, Huddled in the corner, and in obvious medical distress.

55. OFFICERS BODWAY, SANTILLAN, ARNET, CHAMPLAIN, GOMEZ, RIVAS, AND VALENZUELA ADMIT TO HEARING "Gurgling" Sounds Imitating FROM PLAINTIFF WHO WAS UN-ABLE TO RESPOND WHEN ASKED IF HE WAS IN NEED OF MEDICAL ATTENTION.

56. GIVEN THE ABOVE SCENARIO, NO REASONABLE PERSON WOULD BELIEVE THE LEVEL OF FORCE OFFICERS BODWAY, SANTILLAN, ARNET, CHAMPLAIN, GOMEZ, RIVAS, VALENZUELA, BEGAY, MCCARTHY, ROBERTS, AND SHELL ADMIT TO USING AS OUTLINED IN 911-17, WAS NECESSARY, ESPECIALLY, WHEN THEY ADMIT TO ACTING OUT OF AN INITIAL CONCERN PLAINTIFF NEEDED MEDICAL AIDE, NOT IN AN EFFORT TO ARREST PLAINTIFF.

COUNT III.3. SUPPORTING FACTS CONTINUED FROM P.5A:

57. AS OUTLINED IN ¶ 13, SUPRA, NONE OF THE 13 NAMED CITY OF PHOENIX POLICE OFFICERS NAMED AS DEFENDANTS IN THIS COMPLAINT, EVER STATED IN REPORTS THAT THEY INFORMED PLAINTIFF THE PURPOSE OF ARREST AND/OR HIS DETENTION AS REQUIRED UNDER A.R.S. 13-409 SUBSECTION 2.

58. OFFICERS BOOWAY AND CHAMPLAIN ADMIT TO UTILIZING PUNCHES TO PLAINTIFF'S FACE, MULTIPLE CLOSED FIST HAMMER STRIKES TO PLAINTIFF'S HEAD AND FACE, AND KNEE STRIKES TO PLAINTIFF'S BACK AND KIDNEYS, IN VIOLATION OF CITY OF PHOENIX POLICE POLICY, WHICH PROHIBITS USE OF SUCH "STRIKES" IN THESE AREAS.

59. BOOWAY AND CHAMPLAIN ADMIT TO PLAINTIFF LOOSING CONSCIOUSNESS AS A RESULT OF THEIR ACTIONS.

60. THE 11 OFFICERS ASSAULT ON PLAINTIFF, RESULTED IN PLAINTIFF SUFFERING A BROKEN BACK IN 3 PLACES, A BROKEN SHOULDER CLAVICLE, A TORN "A.C.", A BROKEN TOE, RENAL FAILURE, PLAINTIFF ASPIRATED, HAD TO BE INTUBATED, REQUIRING MECHANICAL VENTILATION, PLAINTIFF'S RIGHT EYE WAS SPLIT OPEN, AND REQUIRED SEWING, AND PLAINTIFF WAS HOSPITALIZED SEVERAL DAYS IN ICU AS A RESULT OF THE 11 OFFICERS EXCESSIVE FORCE IN VIOLATION OF STATE LAW UNDER A.R.S. 13-409.

61. MOST OF THE "FORCE" USED BY THE 11 OFFICERS, OCCURRED WHILE PLAINTIFF WAS ALREADY FACE DOWN ON THE GROUND, UN-ARMED, IN A SMALL CONFINED CLOSET, WITH SEVERAL OFFICERS AROUND, OR ON TOP OF PLAINTIFF'S BACK ALREADY, MAKING THEIR ACTIONS ALL THE MORE UNREASONABLE.

COUNT III.

3. SUPPORTING FACTS CONTINUED FROM P.5B:

62. BOOWAY ADMITS TO USING A CLOSED FIST UPPER-CUT PUNCH TO PLAINTIFF'S FACE KNOCKING PLAINTIFF ON THE GROUND. NO REASONABLE PERSON WOULD CONCLUDE SUCH FORCE WAS NECESSARY OR LAWFUL UNDER ANY SCENARIO.

63. NOT A SINGLE ONE OF THE 13 NAMED CITY OF PHOENIX POLICE OFFICERS INFORMED MEDICAL PROFESSIONALS THAT PLAINTIFF WAS KNOCKED UNCONSCIOUS SEVERAL TIMES AS A RESULT OF THEIR USE OF FORCE, NOR, THAT HE LOST CONSCIOUSNESS FOR AS LONG AS 40 SECONDS ON ONE OF THOSE OCCASIONS.

64. NOT A SINGLE ONE OF THE 13 NAMED OFFICERS BOTHERED TO INFORM MEDICAL PROFESSIONALS IN CHARGE OF PLAINTIFF'S CARE AT BANNER GOOD SAMARITAN MED. CENTER THE TYPE OR NATURE OF FORCE USED ON PLAINTIFF, THUS, PROLONGING PLAINTIFF'S SUFFERING NEEDLESSLY, AND SUBJECTING HIM TO UNNECESSARY PROCEDURES IN ORDER TO DETERMINE THE TRUE NATURE AND FULL EXTENT OF PLAINTIFF'S INJURIES.

65. ALL INDIVIDUAL(S) AND/OR PARTIES WERE ACTING UPON THEIR VESTED AUTHORITY AS CITY OF PHOENIX POLICE OFFICERS UNDER THE COLOR OF STATE LAW.

66. PLAINTIFF AVOWS HE COMPLIED WITH THE NOTICE OF CLAIM REQUIREMENTS PURSUANT TO A.R.S. § 12-821.01, AND FILED PROPER NOTICE WITH THE CITY OF PHOENIX CLERKS OFFICE ON 12-18-17, PRIOR TO FILING SUIT.

COUNT ~~III~~ 4

PLAINTIFF WAS SUBJECTED TO ASSAULT AND BATTERY BY MULTIPLE CITY OF PHOENIX POLICE OFFICERS ACTING UNDER COLOR OF STATE LAW. THIS COURT HAS JURISDICTION PURSUANT TO ITS

1. State the constitutional or other federal civil right that was violated: "SUPPLEMENTAL JURISDICTION" DOCTRINE UNDER 28 U.S.C.A. § 1367.

2. Count II. Identify the issue involved. Check only one. State additional issues in separate counts.

- ☐ Basic necessities ☐ Mail ☐ Access to the court ☐ Medical care
☐ Disciplinary proceedings ☐ Property ☐ Exercise of religion ☐ Retaliation
☐ Excessive force by an officer ☐ Threat to safety ☒ Other: STATE TORT (LATIN: ASSAULT / BATTERY)

3. Supporting Facts. State as briefly as possible the FACTS supporting Count II. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

67. PLAINTIFF INCORPORATES HERewith THE PROCEEDING ENUMERATED PARAGRAPHS (1) THROUGH (32), FROM COUNT 1, SUPRA, AS THOUGH FULLY READ HERETO.

68. THE CONDUCT OF CITY OF PHOENIX POLICE OFFICERS: BOODWAY; SAUTELIAN; AGNETT; BEGAY; CHAMP-LAIN; GOMEZ; MCCARTHY; RIVAS; ROBERTS; VALENZUELA; AND SHELL WHILE ACTING UNDER COLOR OF STATE LAW, AS OUTLINED IN ENUMERATED PARAGRAPHS (1) THRU (32) COUNT 1, SUPRA, CONSTITUTES AS ASSAULT AND BATTERY AGAINST PLAINTIFF IN VIOLATION OF ARIZONA STATE LAW.

69. THE 11 ABOVE NAMED OFFICERS ACTIONS WERE IN VIOLATION OF ARIZONA STATE LAW PURSUANT TO A.R.S. § 13-409 RE: JUSTIFICATION FOR USE OF FORCE SINCE 1: NO REASONABLE PERSON WOULD CONCLUDE THE LEVEL OF FORCE UTILIZED WAS NECESSARY, AND 2: SINCE PLAINTIFF WAS NEVER INFORMED OF THE PURPOSE OF ARREST. SEE COUNT 3, ¶¶ 48-66, SUPRA.

70. THE ABOVE NAMED OFFICERS ACTIONS WERE IN VIOLATION OF CITY OF PHOENIX POLICE DEPARTMENTAL POLICY RE: USE OF FORCE; RE: TYPE OF FORCE; -

(CONTINUED ON P. 62.)

4. Injury. State how you were injured by the actions or inactions of the Defendant(s).

AS A DIRECT AND PROXIMATE RESULT OF THE NAMED INDIVIDUALS OR PARTIES ACTIONS OR IN-ACTIONS, PLAINTIFF HAS SUFFERED, AND WILL CONTINUE TO SUFFER, THE FOLLOWING LOSSES OR INJURIES: (SEE COUNT 4 "INJURY" SUPRA, AT P. 3).

5. Administrative Remedies.

a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☒ No

b. Did you submit a request for administrative relief on Count II? ☐ Yes ☒ No

c. Did you appeal your request for relief on Count II to the highest level? ☐ Yes ☒ No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. N/A... PLAINTIFF DID HOWEVER FILE A "NOTICE OF CLAIM" ON 12-18-2017,

PURSUANT TO A.R.S. 12-821.01 WITH THE CITY OF PHOENIX CITY CLERKS DEPARTMENT. PLAINTIFF'S CLAIMS ARE NOT SUBJECT TO PLRA REQUIREMENTS OF 42 U.S.C.A. § 1997e-2 (3). THE NOTICE WAS DENIED ON 1-16-18.

COUNT IV.3. Superseding Facts Continued From P.16:

AND PEEL LEVEL OF FORCE UTILIZED, GIVEN THE TOTALITY OF THE CIRCUMSTANCES.

71. PLAINTIFF SUFFERED SERIOUS LIFE THREATENING INJURIES, THAT WILL REQUIRE ON-GOING MEDICAL CARE AND PHYSICAL THERAPY FOR THE FORESEEABLE FUTURE AS A DIRECT RESULT OF THE ABOVE NAMED 11 OFFICERS ASSAULT AND BATTERY ON PLAINTIFF.

72. THE 278LB BOOWAY ADMITS TO UPPER-CLOTHING PLAINTIFF IN THE FACE, RESULTING IN PLAINTIFF BEING KNOCKED ON THE GROUND.

73. PLAINTIFF ASSERTS BOOWAYS "UPPERCUT" BLOW TO HIS FACE CAUSED, OR LIKELY CAUSED, HIS RIGHT EYE INJURY, WHICH REQUIRED SURGERY.

74. PLAINTIFF WAS BEATEN UNCONSCIOUS, FOR AS LONG AS TO SECONDS ON ONE OF THOSE OCCASIONS, AS ADMITTED BY BOOWAY AND CHAMPLAIN.

75. PLAINTIFF SUFFERED MULTIPLE FRACTURES TO HIS BACK, RIGHT SHOULDER CLAVICLE, AND HIS TOE, AS A RESULT OF THE ASSAULT/BATTERY COMMITTED ON HIM BY THE ABOVE NAMED 11 CITY OF PHOENIX POLICE OFFICERS.

76. PLAINTIFF ASPIRATED AND HAD TO BE INTUBATED REQUIRING MECHANICAL VENTILATION, AS A DIRECT RESULT OF THE ASSAULT/BATTERY COMMITTED ON PLAINTIFF BY THE ABOVE NAMED 11 OFFICERS.

77. BOOWAY, CHAMPLAIN, GOMEZ, AND SANTILLAN AUTHORED CITY OF PHOENIX INCIDENT REPORTS #2017-0000-1472358, RELATED TO PLAINTIFF'S ARREST ON 8-22-17, WHEREIN, ALL ADMIT TO UTILIZING FORCE ON PLAINTIFF, WHICH VIOLATES STATE LAW, VIOLATES CITY OF PHOENIX POLICE POLICY, AND CONSTITUTES ASSAULT/BATTERY UNDER RELEVANT STATE-TOOT LAW.

78. ARNETT VERBALLY ADMITTED TO PLAINTIFF WHILE PLAINTIFF WAS IN THE HOSPITAL ON 8-24-2017, THAT THE ACTIONS OF THE ABOVE NAMED 11 OFFICERS, "GOT:

COUNT IV

3. SUPPORTING FACTS CONTINUED FROM P. 12:

A LITTLE UN-COMFORTABLE FOR HIS TASTE".

18. PATENTEE AOWS HE COMPLIED WITH THE NOTICE OF CLAIM REQUIREMENTS PURSUANT TO A.R.S. § 12-821.01, AND FILED PROPER NOTICE WITH THE CITY OF PHOENIX CLERKS OFFICE ON 12-18-17, PRIOR TO FILING SUIT.

COUNT III 5.

1. State the constitutional or other federal civil right that was violated: THE CITY OF PHOENIX, AN INCORPORATED CITY AND SUBDIVISION OF THE STATE OF ARIZONA, EMPLOYS CUSTOMARY POLICES AND/OR PRACTICES THAT ARE NEGLIGENT, RESULTING IN PLAINTIFF SUFFERING INJURY. THIS COURT HAS JURISDICTION PURSUANT TO 28 U.S.C.A. § 1367.

2. **Count III.** Identify the issue involved. Check only one. State additional issues in separate counts.

- | | | | |
|--|---|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input checked="" type="checkbox"/> Other: <u>STATE TORT CLAIM: "NEGLIGENCE".</u> | |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

79. PLAINTIFF INCORPORATES HERewith THE PRECEDING FILLED PARAGRAPHS (1) THROUGH (78), SUPRA, FROM COUNT'S 3-4, AS THOUGH FULLY READ HEREIN.

80. WHEN THE CITY OF PHOENIX UNDERTAKES THE RESPONSIBILITY OF PROVIDING THE PUBLIC WITH CITY OF PHOENIX POLICE LAW ENFORCEMENT SERVICES, THE CITY ASSUMES A DUTY TO ENSURE ITS OFFICERS CONFORM TO A PARTICULAR STANDARD OF CONDUCT IN ORDER TO PROTECT OTHERS FROM UNREASONABLE RISKS OF HARM.

81. THE CITY OF PHOENIX ("THE CITY") EMPLOYS A CUSTOMARY PRACTICE OF BURRYING THEIR HEADS IN THE SAND, AND FAILING TO TAKE NECESSARY AND APPROPRIATE STEPS REGARDING GROSS MISCONDUCT OF THE PART OF SWORN OFFICERS WITHIN THE CITY OF PHOENIX POLICE DEPARTMENT.

82. IN THIS INSTANCE, THE COMMANDING OFFICER ON THE SCENE AUGUST 22, 2012, DURING PLAINTIFF'S "DETENTION AND/OR ARREST" WAS CITY OF PHOENIX POLICE SERGEANT PHILIP ROBERTS BADGE #4520.

83. IN PHOENIX POLICE INTERNAL REPORTS DATED OCTOBER 12, 2012, RELATED TO AN INTERNAL INVESTIGATION NO: PSR10-0112 OF ALLEGED MISCONDUCT OF ROBERTS, PROFESSIONAL STANDARDS BUREAU ("PSR") CONCLUDED AS FOLLOWS:

(CONTINUED ON P. 7A)

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

AS A DIRECT AND PROXIMATE RESULT OF THE NAMED INDIVIDUAL(S) OR PARTIES ACTIONS OR IN-ACTIONS, PLAINTIFF HAS SUFFERED, AND WILL CONTINUE TO SUFFER, THE FOLLOWING LOSSES OR INJURIES: (SEE COUNT 1: "INJURY" SUPRA, AT P. 3).

5. **Administrative Remedies.**

a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☒ No

b. Did you submit a request for administrative relief on Count III? ☐ Yes ☒ No

c. Did you appeal your request for relief on Count III to the highest level? ☐ Yes ☒ No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. N/A. PLAINTIFF DID HOWEVER FILE A "NOTICE OF CLAIM" ON 12-18-2017, PURSUANT TO A.R.S. § 12-821.01 WITH THE CITY OF PHOENIX CITY CLERKS DEPARTMENT. PLAINTIFF'S CLAIMS ARE NOT

SUBJECT TO PLRA REQUIREMENTS OF 42 U.S.C.A. § 1997e (2).

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.

THE NOTICE WAS DENIED ON 1-16-18.

COUNT V.

3. Supporting Facts Continued From P.7:

- A. ROBERTS AUTHORED AS MANY AS 40 PLUS DOCUMENTS ALLEGING MISCONDUCT AND/OR CRIMINAL ACTS COMMITTED BY SEVERAL CITY OF PHOENIX PERSONNEL, WHICH WERE DEFAMATORY IN NATURE, BASED ON HEARSAY, AND FOUND TO BE LIES.
- B. ROBERTS MADE COUNTLESS UNTRUTHFUL STATEMENTS;
- C. ROBERTS USED CITY EQUIPMENT AND/OR MATERIAL AND/OR HIS POSITION AS A CITY EMPLOYEE AND LAW ENFORCEMENT OFFICER FOR PERSONAL GAIN;
- D. ROBERTS FAILS TO FOLLOW CHAIN OF COMMAND;
- E. ROBERTS ACCUSED OTHER INDIVIDUALS INCLUDING OTHER CITY OF PHOENIX POLICE EMPLOYEES FALSELY, OF HAVING COMMITTED FELONY CRIMES;
- F. CAUSED IRREVERSIBLE DAMAGE TO THE REPUTATIONS OF SEVERAL INDIVIDUALS, THE CITY OF PHOENIX, THE PHOENIX POLICE DEPARTMENT, AND SEVERAL CITY EMPLOYEES;
- G. ROBERTS SEXUALLY HARASSED CITY OF PHOENIX POLICE DETECTIVE AZIZAH DRUGGAS;
- H. ROBERTS CONDUCT ON MANY LEVELS, PSB INVESTIGATORS AFFIRMED, VIOLATED THE CODE OF ETHICS, OATH OF OFFICE, AND BASIC DEPARTMENT VALUES;
- I. ROBERTS CONDUCT PSB INVESTIGATORS FELT: "WAS SO OUTRAGEOUS THAT ATTEMPTS TO CORRECT HIS PERFORMANCE WOULD BE FOLETLESS";
- J. PSB INVESTIGATORS RECOMMENDED ROBERTS BE TERMINATED OR AT LEAST DEMOTED YET, VIRTUALLY 5 YEARS LATER, ROBERTS IS STILL EMPLOYED AS A SUPERVISOR WITHIN THE CITY OF PHOENIX POLICE DEPARTMENT
- K. ROBERTS HIMSELF PARTICIPATED IN THE OUTRAGEOUS ASSAULT AND BATTERY COMMITTED ON PLAINTIFF ON AUGUST 22, 2017, RIGHT ALONG SIDE HIS SUBORDINATE OFFICERS:

COUNT 2.

3. SUPPORTING FACTS CONTINUED FROM P. 24:

BODWAY; SANTILLAN; ARNET; BEGLAY; CHAMPLAIN; GOMEZ; MCCARTHY;
 RIVAS; SHELL; AND VALENZUELA.

86. THE CITY EMPLOYS A CUSTOMARY POLICY AND/OR PRACTICE OF FAILING TO ENSURE IT'S SUPERVISING OFFICERS WITHIN THE CITY OF PHOENIX POLICE DEPARTMENT UPHOLD AND/OR ENFORCE DEPARTMENTAL POLICY, AS OUTLINED IN THE PROCEEDING ENUMERATED PARAGRAPHS 9-47 OF COUNT 2, SUPRA.

87. AS A DIRECT AND PROXIMATE RESULT OF THE CITY'S CUSTOMARY PRACTICE OF FAILING TO ENSURE IT'S SUPERVISING OFFICERS WITHIN THE CITY'S POLICE DEPARTMENT UPHOLD AND/OR ENFORCE DEPARTMENTAL VALUES AND/OR POLICIES, PLAINTIFF SUFFERED SERIOUS LIFE THREATENING INJURIES.

88. EVERY SWORN PHOENIX POLICE OFFICER IS REQUIRED TO INTERVENE WHEN THEY KNOW OR SHOULD KNOW ANOTHER EMPLOYEE IS USING EXCESSIVE FORCE UNDER CURRENT CITY OF PHOENIX POLICE POLICY RE: USE OF FORCE; YET, THE CITY HAS A CUSTOMARY PRACTICE OF FAILING TO ENSURE IT'S SUPERVISORS ARE HELD ACCOUNTABLE FOR FAILING TO ENFORCE THIS POLICY.

89. EVERY SWORN PHOENIX POLICE OFFICER IS SUPPOSED TO BE FULLY TRAINED AS TO CITY POLICY RE: LEVELS OF FORCE ACCEPTABLE; RE: TYPES OF FORCE UTILIZED GIVEN THE TOTALITY OF CIRCUMSTANCES; YET, THE CITY HAS A CUSTOMARY PRACTICE OF FAILING TO ENSURE IT'S SUPERVISORS ARE ENFORCING THESE POLICIES WITHIN RANKS AND FILE PHOENIX POLICE PERSONNEL.

90. BODWAY AND CHAMPLAIN'S OWN ADMISSIONS RE: BOTH THE LEVELS OF FORCE USED; AS WELL AS TYPES OF FORCE UTILIZED, GIVEN THE TOTALITY OF CIRCUMSTANCES, CLEARLY VIOLATED CITY OF PHOENIX POLICE POLICY; YET, THE CITY-

P. 7B.

(CONTINUED ON P. 7C)

Count V.

3. SUPPORTING FACTS CONTINUED FROM P. 7B:

NEGLIGENTLY FAILS TO ACT, AND APPROPRIATELY ADDRESS, OFFICER MIS-
CONDUCT PLACING IT'S CITIZENS AT UN REASONABLE RISK OF HARM.

91. THE CITY HAS NEGLIGENTLY FAILED TO ENSURE POLICY IS UPHELD, AND IT'S
OFFICERS USE OF FORCE IS OBJECTIVELY REASONABLE, AND WHEN NOT, OFF-
ICERS ARE HELD ACCOUNTABLE FOR THEIR MISCONDUCT.

92. PLAINTIFF AVOWS HE COMPLIED WITH THE NOTICE OF CLAIM REQUIREMENTS
PURSUANT TO A.R.S. § 12-821.01, AND FILED PROPER NOTICE WITH THE CITY OF
PHOENIX CLERKS OFFICE ON 12-18-2017, PRIOR TO FILING SUIT.

F. REQUEST FOR RELIEF CONTINUED:

OF STATE LAW PURSUANT TO A.R.S. § 13-409.

D. DECLATORY JUDGEMENT DECLARING PLAINTIFF WAS SUBJECTED TO ASSAULT AND BATTERY BY MULTIPLE CITY OF PHOENIX POLICE OFFICERS ACTING UNDER COLOR OF STATE LAW.

E. DECLATORY JUDGEMENT DECLARING THE CITY OF PHOENIX EMPLOYS CUSTOMARY POLICIES AND/OR PRACTICES THAT ARE NEGLIGENT.

F. DECLARATION OF THIS COURT'S JURISDICTION UTILIZING THE COURT'S SUPPLEMENTAL JURISDICTION OR PENDANT JURISDICTION PURSUANT TO 28 U.S.C.A. § 1367 RELATED TO PLAINTIFF'S STATE TORT CLAIMS.

G. INJUNCTIVE RELIEF THROUGH AN ORDER PREVENTING FURTHER VIOLATIONS OF PLAINTIFF'S RIGHTS UNDER BOTH U.S. AND AZ. CONSTITUTIONS.

H. INJUNCTIVE RELIEF THROUGH THIS COURT'S NECESSARY AND APPROPRIATE ORDER REQUIRING THE CITY OF PHOENIX TO IMPLEMENT, CREATE, AND/OR ENFORCE POLICIES AND/OR PRACTICES IN COMPLIANCE WITH BOTH STATE AND FEDERAL LAWS.

I. INJUNCTIVE RELIEF REQUIRING THE CITY TO MANDATE ADDITIONAL TRAINING ON REASONABLE AND APPROPRIATE LEVELS OF FORCE FOR CITY OF PHOENIX POLICE OFFICERS; BODWAY; SANTILLAN; ARNET; BECLAY; CHAMPLAIN; GOMEZ; MCCARTHY; RIVAS; SHELL; VALENZUELA; SERGEANT NELSON; SERGEANT ROBERTS AND SERGEANT SALES; AND OBJECTIVELY REASONABLE IMPLEMENTATION OF FORCE.

J. INJUNCTIVE RELIEF REQUIRING THE CITY TO TAKE ALL REASONABLE AND/OR APPROPRIATE STEPS TO ADDRESS GROSS INSTANCES OF MISCONDUCT ON THE PART OF ITS SWORN CITY OF PHOENIX POLICE EMPLOYEES WHEN SUCH INSTANCES ARISE, TO PROTECT CITIZENS FROM UNREASONABLE RISKS OF HARM, INCLUDING, BUT NOT LIMITED TO, IMMEDIATE TERMINATION OF THE CITY EMPLOYEE IN QUESTION, IF APPROPRIATE.

E. REQUEST FOR RELIEF CONTINUED:

K. PLAINTIFF SEEKS NOMINAL DAMAGES TOTALING 1st.

L. AS A DIRECT AND/OR PROXIMATE RESULT OF THE FOLLOWING NAMED INDIVIDUAL(S) AND/OR PARTIES ACTIONS OR IN-ACTIONS, PLAINTIFF SEEKS MONETARY COMPENSATORY DAMAGES AS FOLLOWS: 1). CITY OF PHOENIX POLICE LIEUTENANT SALEAR BADGE #06138 \$100,000; 2) CITY OF PHOENIX POLICE SERGEANT ROSEMARY NELSON BADGE #06878 \$100,000; 3). CITY OF PHOENIX POLICE OFFICER JOJOY EDWARD BODWAY BADGE #08345 \$250,000; 4). CITY OF PHOENIX POLICE OFFICER NATHANIEL CHAMPLAIN BADGE #08733 \$250,000; 5). CITY OF PHOENIX POLICE SERGEANT PHILIP ROBERTS BADGE #04520 \$250,000; 6). 8 CITY OF PHOENIX POLICE OFFICERS: RYAN DENNIS ARNETT BADGE #07762; CHRISTINA M. BEGLAY BADGE #08268; RAMON GOMEZ BADGE #10160; DECLAN M. MCCARTHY BADGE #08141; ANDREA PEREZ-SANTILLAN BADGE #10167; ADRIAN RIVAS BADGE #9021; RYAN J. SELL BADGE #09838; AND FRANK VALENZUELA BADGE #10093 ... \$50,000 EACH; 7). CITY OF PHOENIX ... \$250,000... TOTAL COMPENSATORY DAMAGES SOUGHT... \$1,600,000.

M. AS A DIRECT AND/OR PROXIMATE RESULT OF THE FOLLOWING NAMED INDIVIDUAL(S) AND/OR PARTIES ACTIONS OR IN-ACTIONS, PLAINTIFF SEEKS PUNITIVE AND/OR EXEMPLARY DAMAGES AS FOLLOWS: 1). CITY OF PHOENIX POLICE LIEUTENANT SALEAR BADGE #06138 \$250,000; 2). CITY OF PHOENIX POLICE SERGEANT ROSEMARY NELSON BADGE #06878 \$250,000; 3). CITY OF PHOENIX POLICE OFFICER JOJOY EDWARD BODWAY BADGE #08345 \$500,000; 4). CITY OF PHOENIX POLICE OFFICER NATHANIEL CHAMPLAIN BADGE #08733 \$500,000; 5). CITY OF PHOENIX POLICE SERGEANT PHILIP ROBERTS BADGE #04520 \$500,000; 6). 8 CITY OF PHOENIX POLICE OFFICERS:

F. REQUEST FOR RELIEF CONTINUED:

RYAN DENNIS ARNETT BADGE# 077102; CHRISTENA U. BEZAY BADGE# 082108; RAMON GOMEZ BADGE# 101600; DECLAN M. MCCARTHY BADGE# 08141; ANDREA PEREZ-SANTILLAN BADGE# 10167; ADRIAN RIVAS BADGE# 9024; RYAN SHEL BADGE# 09838; AND FRANK VALENZUELA BADGE# 10093 ... \$ 100,000 EACH; 7). CITY OF PHOENIX ... \$ 250,000.

TOTAL PUNITIVE / EXEMPLARY DAMAGES SOUGHT
\$ 3,050,000.

N. ALL NAMED PARTIES ARE SUED IN BOTH THEIR INDIVIDUAL AND OFFICIAL CAPACITIES AND ALL MONETARY DAMAGES SOUGHT ARE BOTH INDIVIDUALLY AND/OR COLLECTIVELY.

O. ATTORNEY FEES WHERE APPLICABLE.

P. REIMBURSEMENT OF COSTS OF LITIGATION, INCLUDING, BUT NOT LIMITED TO: ALL COURT FILING FEES; POSTAGE FEES; COPY COSTS; AND ANY OTHER COSTS INCURRED THROUGH PROSECUTING PLAINTIFF'S CLAIMS.

Q. JURY TRIAL DEMANDED.

R. ANY OTHER RELIEF THIS COURT DEEMS REASONABLE, APPROPRIATE, AND JUST.

MARICOPA COUNTY SHERIFF'S OFFICE
CERTIFICATION

I hereby certify that on this date August 21, 2018

I mailed the original and one (1) copy to the Clerk of the United States District Court, District of Arizona.

I further certify that copies of the original have been forwarded to:

√ Hon _____ United States District Court, District of Arizona.

____ Hon _____ United States District Court, District of Arizona.

____ Attorney General, State of Arizona, _____

____ Judge _____ Superior Court, Maricopa County, State of Arizona.

____ County Attorney, Maricopa County, State of Arizona _____

____ Public Defender, Maricopa County, State of Arizona _____

____ Attorney _____

____ Other _____

R. M.
Legal Support Specialist Signature

B1300
S/N

INMATE LEGAL SERVICES
Maricopa County Sheriff's Office
3250 W. Lower Buckeye Rd.
Phoenix, AZ 85009